

FOOD AND AGRICULTURAL CODE REPLACEMENT PAGE GUIDE

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FOOD AND AGRICULTURAL CODE

Summary of Changes

Enclosed is the text of the California Food and Agricultural Code (FAC) Division 6, “Pest Control Operations” and Division 7, “Agricultural Chemicals, Livestock Remedies, and Commercial Feeds” related to the possession, sale, and use of pesticides in California.

The following sections of the FAC were amended, added, or repealed by legislation passed by the California Legislature. Code sections effective in 2011, 2009, 2008 and 2007 are shown in the tables below:

FAC Section	Action	Legislative Bill Number	Chapter Number	Statutes of	Effective Date	Reference
					2011	
11502.5	Amended	AB 2122	375	2010	1/1/2011	Continuing Education
12841.4	Amended	AB 2612	393	2010	1/1/2011	Container Recycling
					2009	
12841.3	Correction					Missing
12841.4	Adopted	SB 1723	533	2008	1/1/2009	Container Recycling
13000(a)	Correction					Typo
14099	Correction					Removed
15204 (a)	Correction					Corr. Citation
					2008	
224	Repealed / Operative	AB 1713	451	2007	7/1/2008 – 1/1/2009	Food & Ag Fund
224.5	Added	AB 1713	451	2007	7/1/2008	F&A Fund
13000	Amended	AB 1717	338	2007	1/1/2008	Penalties
15204	Amended	AB 1717	338	2007	1/1/2008	Fume Program
15204.5	Added	AB 1717	338	2007	1/1/2008	Fume Program

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					2007	
12811.5	Amended	AB 2648	93	2006	1/1/2007	Registration
12836.6	Amended	AB 2648	93	2006	1/1/2007	Registration
13181	Amended	AB 2865	865	2006	1/1/2007	School IPM
13183	Amended	AB 2865	865	2006	1/1/2007	School IPM
13185	Amended	AB 2865	865	2006	1/1/2007	School IPM
13186	Amended	AB 2865	865	2006	1/1/2007	School IPM

An electronic link to the complete Food and Agriculture Code is available on the Department of Pesticide Regulation's website www.cdpr.ca.gov under the blue tab "Laws/Regulations - Laws".

If you have any questions, please contact the Enforcement Branch Liaison assigned to your county.

Sections 11501-11518

11501. The purposes of this division and Chapter 1 (commencing with Section 12501), Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), and Chapter 3.5 (commencing with Section 14101) of Division 7 are as follows:

(a) To provide for the proper, safe, and efficient use of pesticides essential for production of food and fiber and for protection of the public health and safety.

(b) To protect the environment from environmentally harmful pesticides by prohibiting, regulating, or ensuring proper stewardship of those pesticides.

(c) To assure the agricultural and pest control workers of safe working conditions where pesticides are present.

(d) To permit agricultural pest control by competent and responsible licensees and permittees under strict control of the director and commissioners.

(e) To assure consumers and users that pesticides are properly labeled and are appropriate for the use designated by the label and that state or local governmental dissemination of information on pesticidal uses of any registered pesticide product is consistent with the uses for which the product is registered.

(f) To encourage the development and implementation of pest management systems, stressing application of biological and cultural pest control techniques with selective pesticides when necessary to achieve acceptable levels of control with the least possible harm to nontarget organisms and the environment.

11501.1. (a) This division and Division 7 (commencing with Section 12501) are of statewide concern and occupy the whole field of regulation regarding the registration, sale, transportation, or use of pesticides to the exclusion of all local regulation. Except as otherwise specifically provided in this code, no ordinance or regulation of local government, including, but not limited to, an action by a local governmental agency or department, a county board of supervisors or a city council, or a local regulation adopted by the use of an initiative measure, may prohibit or in any way attempt to regulate any matter relating to the registration, sale, transportation, or use of pesticides, and any of these ordinances, laws, or regulations are void and of no force or effect.

(b) If the director determines that an ordinance or regulation, on its face or in its application, is preempted by subdivision (a), the director shall notify the promulgating entity that it is preempted by state law. If the entity does not repeal its ordinance or regulation, the director shall maintain an action for declaratory relief to have the ordinance or regulation declared void and of no force or effect, and shall also bring an action to enjoin enforcement of the ordinance or regulation.

(c) Neither this division nor Division 7 (commencing with Section 12501) is a limitation on the authority of a state agency or department to enforce or administer any law that the agency or department is authorized or required to enforce or administer.

(d) At the request of any state agency disseminating information on the pesticidal uses of any product, the director shall consult with, and provide technical assistance to, that agency to ensure that the dissemination is based on valid scientific information and consistent with state law.

11501.5. The director, and the commissioner of each county under the direction and supervision of the director, shall enforce this division and the regulations which are issued pursuant to it.

11502. The director shall adopt regulations which govern the conduct of the business of pest control.

11502.5. The director may adopt regulations to establish the minimum requirements of education, continuing education, training, experience, and examination for applicants for any license or certificate, or renewal of any license or certificate, issued by the director pursuant to this division or Division 7 (commencing with Section 12500). A regulation adopted or amended pursuant to this section pertaining to continuing education requirements shall establish minimum course requirements related to pesticides and pest management. The director shall approve courses that include plant health, organic and sustainable practices, water and air monitoring and residue mitigation, maximum residue levels, quarantine practices, and the on-farm storage of fumigants, all in the context of pesticides and pest management. The director shall not renew a license or certificate if the person who was issued the license or certificate did not complete the required continuing education during the period of validity of the license or certificate, and the person must take and pass the examination to be again issued such a license or certificate. The director shall act within 15 business days of receipt to approve or reject continuing education courses submitted to meet the requirements of this division or Division 7 (commencing with Section 12500).

(b) The director shall establish, by regulation, fees for the Department of Pesticide Regulation's licensing and certification programs as established pursuant to this division or Division 7 (commencing with Section 12500). These programs include, but are not limited to:

- (1) License and certificate examination, application, and renewal.
- (2) Approval of continuing education courses and continuing education course providers.
- (3) Changes related to any license or certificate, including, but not limited to, name or address changes, license or certificate replacement costs, duplicate copy of a license or certificate, and changes in qualified person, bond, insurance, or registered officers.
- (4) Penalties for late payment of licensing and certification fees.

(c) The fees established pursuant to this section may include administrative costs, including overhead costs.

(d) The regulations shall provide that the examination fee may be charged to applicants who request the director to reschedule an examination due to the applicant's failure to obtain a passing score or failure to appear for the scheduled examination, and for scheduling an examination to amend a license.

(e) The fees established pursuant to this section shall be set so that the total revenue collected each fiscal year is sufficient to support the expenditure levels for these programs contained in the annual Budget Act. If the director determines that the revenue collected during the preceding year was greater than, or less than, the expenditure levels for these programs set forth in the Budget Act, the director may further adjust the current fees to compensate for the overcollection or undercollection.

(f) Funds collected pursuant to this section shall be deposited in the Department of Pesticide Regulation Fund, and shall be available for expenditure by the department, upon appropriation, for the purposes of carrying out the programs established pursuant to this division or Division 7 (commencing with Section 12500).

(g) The regulations adopted pursuant to this section, or any amendment thereto, shall be adopted by the director in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other provision of law, the emergency regulations adopted pursuant to this section shall remain in effect until amended by the director.

11503. The commissioner of any county may adopt regulations applicable in his or her county which are supplemental to those of the director which govern the conduct of pest control operations and records and reports of those operations. The regulations may include provisions pertaining to any matter related to the accomplishment of the purposes of Section 11737. The provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall be followed insofar as practicable in the adoption of the regulations by the commissioner. The regulations shall be filed with the director who shall compile them. Each regulation of the commissioner shall be approved by the director before it becomes operative. The director, in his or her review of the commissioner's regulations, shall consider, but not be limited to considering, the necessity, authority, clarity, and consistency of the regulations, as these terms are defined in Section 11349 of the Government Code.

11503.5. The county agricultural commissioner may apply Section 11503 to the agricultural use of any pesticide for agricultural production within one-quarter mile of a school with respect to the timing, notification, and method of application. Any regulations adopted pursuant to this section shall become operative unless specifically disapproved in writing by the director within 30 calendar days of their submission by the commissioner.

11504. Prior to the adoption of regulations by a commissioner, a notice of intention to adopt regulations shall be published in the county, pursuant to Section 6061 of the Government Code, at least 10 days in advance of the time the regulations are to be adopted, amended, or repealed.

11505. The notice of intention which is referred to in Section 11504 shall contain a statement of the time, place, and nature of proceedings for the adoption of the regulations, and either the express terms or an informative summary of the proposed regulations.

11506. At least 10 days prior to the date set for the adoption, amendment, or repeal of the regulations, the commissioner shall mail a copy of the notice of intention to every person who has registered with the commissioner in the manner required by Article 2 (commencing with Section 11731), Chapter 4 of this division, and to any other interested person that has filed with the commissioner a request to receive a notice of such proceedings.

11507. On the date and at the time and place designated in the notice of intention, the commissioner shall afford any interested person or his duly authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present them orally.

11508. The commissioner shall consider all relevant matter which is presented to him before he adopts any regulation.

11509. In any hearing which is conducted pursuant to Section 11507, the commissioner or his duly authorized representative shall have authority to administer oaths or affirmations, and may continue or postpone such hearing, from time to time, to such time and at such place as he shall determine.

11510. The regulations of the commissioner are subject to review and approval by the director as to reasonableness, and if approved they shall be filed with the director. The regulations shall become effective 30 days after they are approved by the director unless they are designated as emergency regulations.

11511. If, in the opinion of the commissioner, the public health, welfare, or safety requires that any regulation take effect immediately he shall designate it as an emergency regulation and specify in writing the facts which constitute the necessity. An emergency regulation shall become effective on the date it is approved by the director.

11512. Except as provided in Section 11512.5, the proceedings for all hearings conducted by the director pursuant to this division shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The director shall have all of the powers which are granted in that chapter.

11512.5. (a) The commissioner may refuse, suspend, or revoke a county registration or permit pursuant to Section 11735, 11924, 12035, or 14008. Before that action is taken, the party whose registration or permit request is to be refused, suspended, or revoked, the registered party, or the permittee shall be given a written notice of the proposed action, including the basis for the action, and shall have the right to request a hearing before the commissioner within 20 days after receiving notice of the proposed action. A notice of the proposed action that is sent by certified mail to the last known address of the person against whom the action is proposed shall be considered received even if delivery is refused or the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to present any evidence or argument on his or her own behalf. If a hearing is not requested in a timely manner, the commissioner may take the action proposed without a hearing.

If the party whose registration or permit is refused, suspended, or revoked requested and appeared at a hearing, he or she may appeal to the director within 10 days of mailing or personal service of the commissioner's decision. The following procedure shall apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent and shall state the grounds for the appeal. The commissioner's decision shall be stayed pending the director's decision, except as provided in subdivision (b). The party whose registration or permit has been refused shall remain unregistered or unpermitted pending the outcome of the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, make written application to the director to present new evidence, stating the materiality of the evidence, and the reasons why the evidence was not introduced at the hearing before the commissioner. The evidence may be allowed in the discretion of the director. Thereafter, 10 days shall be given the parties to rebut the evidence and make written application to the director to present oral or written argument. An application to present written argument shall be granted, but the director shall have discretion to grant oral argument or to grant both oral and written argument. If an application to present oral argument is granted, written notice of the time and place for oral argument shall be given each party at least 10 days before the date set therefor. The time may be shortened by mutual agreement of the parties. If written argument is granted,

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12841.1 (a)., continued

be appropriated for this purpose. The secretary's written determination, including a request for a specified additional assessment and the basis for that request, shall be provided to the director by a time and in a manner prescribed by the director.

(b) The revenue collected pursuant to this section shall be deposited monthly in a separate account in the Department of Food and Agriculture Fund. These revenues shall be expended only by the Department of Food and Agriculture, upon appropriation, to provide consultation to the department pursuant to Section 11454.2. No funds may be expended prior to the execution of a memorandum of understanding pursuant to subdivision (b) of Section 11454.2. The consultation activities to be undertaken by the Department of Food and Agriculture are limited solely to those specifically authorized in the memorandum of understanding executed pursuant to Section 11454.2. These funds may not be expended for scientific risk assessment activities. The department shall be reimbursed from the Department of Food and Agriculture Fund for revenue collection activities. If the director determines that a person is entitled to a refund of mill assessment funds that were collected pursuant to this section, the director shall inform the Secretary of Food and Agriculture of the amount of the refund due, which shall be reimbursed from the Department of Food and Agriculture Fund.

12841.2. (a) The Department of Pesticide Regulation shall create a program to conduct outreach and education activities for worker safety, environmental safety, school safety, and proper pesticide handling and use, to include, but not be limited to, the following issues and criteria:

(1) The program shall encompass all communities, including urban, rural, and suburban communities.

(2) All potential exposure opportunities, including household, industrial, and agricultural uses.

(3) Rights and procedures of workers and those potentially exposed to pesticides and how to file confidential complaints.

(b) The program shall be conducted in accordance with the department's environmental justice guidelines.

(c) The director shall appoint an advisory committee of interested stakeholders to provide input on the development and implementation of the program.

(d) This program shall compliment and not replace other outreach efforts currently in place not dealing with the issues addressed within this program.

12841.3. (a) Notwithstanding Sections 2282, 12784, and 12841, the director shall pay from the revenue collected from the mill assessment in the Department of Pesticide Regulation Fund an amount not to exceed the revenue derived from 0.5 mill (\$0.0005) per dollar of sales for all pesticide sales for use in this state to counties in nonattainment areas to assist those counties in the administration and enforcement of restrictions on the use of field fumigants pursuant to Chapter 3 (commencing with Section 14001) and the regulations issued pursuant to it. These funds shall be in addition to the funds distributed pursuant to Section 12841 and shall be distributed to the counties in accordance with the criteria set forth in subdivisions (c) and (d).

(b) As used in this section, "nonattainment area" means an area designated in Section 81.305 of Title 40 of the Code of Federal Regulations for the purpose of air quality planning within the chart titled "California - Ozone (1-Hour Standard)."

12841.3., continued

(c) The funds available for payment pursuant to subdivision (a) shall be apportioned based on the following criteria:

(1) A minimum of fifty thousand dollars (\$50,000) shall be apportioned to each county in a nonattainment area.

(2) The remaining amount shall be apportioned to the counties based on fumigant related workload, which may include, but is not limited to, both of the following:

(3) The number of restricted use material permits issued for fumigants.

(4) The number of field fumigant applications in each county to the total for all counties within all nonattainment areas during the previous fiscal year.

(d) Only counties within a nonattainment area for which the Department of Pesticide Regulation has established a fumigant emission limit pursuant to Chapter 3 (commencing with Section 14001), and the regulations issued pursuant to it, in the current or the previous fiscal year shall receive payment of the amount apportioned pursuant to the criteria set forth in subdivision (c).

12841.4. (a) Every registrant of any production agricultural- or structural-use pesticide product sold for use in this state that is packaged in rigid, nonrefillable, high-density polyethylene (HDPE) containers of 55 gallons or less shall establish a recycling program, or demonstrate participation in a recycling program to ensure HDPE containers are recycled. Container recycling must comply with the American National Standard Institute (ANSI) American Society of Agriculture and Biological Engineers (ASABE) Standard S596, entitled Recycling Plastic Containers from Pesticides and Pesticide-Related Products, as published in February 2006. The records required by these standards shall be maintained for three years and shall be subject to audit by the director.

(b) Any registrant who is required to establish or participate in a recycling program pursuant to this section shall provide to the director, at least annually, a document certifying that this requirement has been met.

(c) (1) The director may adopt regulations to carry out the purposes of this section. Upon a federal pesticide container recycling program being adopted, the director may adopt regulations to conform to the federal program.

(2) It is the intent of the Legislature in enacting this section that any regulatory standards adopted by the department shall be at least as stringent as those standards referred to in subdivision (a).

(d) Commencing September 1, 2010, the department shall estimate a recycling rate for pesticide containers and propose suggestions for program improvements and post this information annually on its Internet Web site.

12842. Every person who sells for use in this state any pesticide products that have been registered by the director shall maintain in this state, or with the director's permission at another location, an accurate record of all transactions subject to assessment for four years. The records are subject to audit by the director and shall clearly demonstrate proof payment of all applicable assessments for each registered pesticide product sold for use in this state.